Supreme Court, U.S.
FILED
MAR 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE CITY OF IRVINE,
Petitioner,

vs.

COUNTY OF ORANGE, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF AND SECOND SUPPLEMENTAL APPENDIX

McDERMOTT, WILL & EMERY
JOHN E. McDERMOTT*
ERICH R. LUSCHEI
Suite 600
2049 Century Park East
Los Angeles, CA 90067
(213) 277-4110
Attorneys for Petitioner

*(Counsel of Record)

Lawyers Brief Service / Legal Publishers / (213) 383-4457 / (714) 720-1510

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. RESPONDENTS' RELIANCE ON *NAACP v. NEW YORK* IS MISPLACED 1

SECOND SUPPLEMENTAL APPENDIX

FIRST AMENDED COMPLAINT, UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED MARCH 15, 1985 ..... A-1

TABLE OF AUTHORITIES

Page

Cases

Legal Aid Society of Alameda County v. Dunlop
618 F.2d 48 (9th Cir. 1980) 3

NAACP v. New York
413 U.S. 345 (1973) 1, 2

United Airlines, Inc. v. McDonald
432 U.S. 385 (1977) 3

Federal Statutes

28 U.S.C. § 1927 3

Rules

Federal Rules of Civil Procedure Rule 24 ..... 1, 3

Supreme Court Rule 49.2 3

Supreme Court Rule 50.7 3

No. 86-1305

IN THE

Supreme Court of the United States

October Term 1986

THE CITY OF IRVINE,
Petitioner,

vs.

COUNTY OF ORANGE, et al.,
Respondents.

PETITIONER'S REPLY BRIEF AND SECOND SUPPLEMENTAL APPENDIX

I. RESPONDENTS' RELIANCE ON *NAACP V. NEW YORK* IS MISPLACED

On the timeliness of Irvine's motion to intervene, respondents contend that the lower court rulings in this case fall squarely within the parameters of *NAACP v. New York*, 413 U.S. 345 (1973). Nothing could be further from the truth. This case presents distinct facts from *NAACP* which have not been addressed definitively by this or any other court and warrant review by this Court to clarify the construction and application of Fed. R. Civ. P., Rule 24.

When this litigation began, it was *only* about the expansion of John Wayne Airport. El Toro MCAS was not in any way the subject of the lawsuit, nor was the County's resolution opposing commercial use of El Toro MCAS.

Irvine, relying on that resolution, felt comfortable that its sister city Newport Beach would adequately protect its interests in the John Wayne Airport litigation.

Under respondents' reading of *NAACP*, Irvine should have known that this litigation might be settled and should have taken affirmative steps to protect its interests. But settled in what manner? Irvine may have had reason to expect that litigation affecting the expansion of John Wayne Airport, which is all that the County's suit was about, could be settled. Yet it never imagined, nor had any reason to suppose, that the litigation might be settled *on the condition* that the County of Orange repeal a resolution opposing commercial development of El Toro MCAS, an entirely separate airport which never was the subject of the County's suit. Expecting Irvine to anticipate such an outcome is not only unreasonable but would turn *NAACP* on its ear and produce a harsh and unfair result never intended by this Court in *NAACP*.

Denial of Irvine's motion to intervene for lack of timeliness also punishes the wrong party. It rewards the County for its failure, either in its complaint or *prior* to the Settlement Agreement, to notify the one party most affected by the repeal of its resolution opposing commercial use of El Toro — The City of Irvine, in whose sphere of interest El Toro is located. It punishes Irvine for its reliance on the County's complaint and the County's resolution opposing commercial use of El Toro MCAS.

NAACP is simply not applicable because the terms of the consent decree there did not exceed the issues raised by the complaint. The only equitable solution to the application of the timeliness standard to motions to intervene is that the complaint should govern the scope of the issues Irvine should have known might be settled. As to any other issues,

timeliness should be judged according to "when the intervenor became aware that its interest would no longer be protected by the parties." *Legal Aid Society of Alameda County v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) (citing *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977)).

In this case, the complaint makes no mention of El Toro MCAS; it concerns itself *solely* with the proposed expansion of John Wayne Airport. *See* Petitioner's Reply Brief, Second Supplemental Appendix. The record is clear that, notwithstanding publicity about the possibility of settlement, Irvine did not learn of *the repeal of the County's resolution opposing commercial use of El Toro* until the settlement was announced, at which point it acted expeditiously to intervene. The Court should accept this case for hearing because of the lack of clarity about the scope of *NAACP*, the need to harmonize its decisions in *NAACP* and *McDonald* and to resolve an important dispute over the correct construction and interpretation of Fed. R. Civ. P., Rule 24.[1]

---

[1] For these same reasons, respondents' request for sanctions pursuant to 28 U.S.C. § 1927 and Supreme Court Rules 49.2 and 50.7 is wholly inappropriate. Those provisions only apply to frivolous appeals. Respondents' characterization of Irvine's inferences regarding the County's intentions toward El Toro MCAS is intemperate (Respondent's Brief at 7 n.3), has nothing to do with the issue of timeliness which is the subject of this petition and thus is not a basis for an award of sanctions. Irvine made no "misrepresentations," only its own inferences and opinions which counsel made clear to the Court were inferences in a letter following the petition. Respondents' Brief, Supplemental Appendix at 26a. Irvine continues to believe those inferences are fair to make in view of the County's failure even to notify or consult with Irvine before rescindng its resolution opposing commercial use of El Toro.

NAACP is distinguishable in another respect. Had intervention been permitted in *NAACP*, a city election would have been affected. 413 U.S. at 368-69. No such palpable prejudice is present here. Irvine merely wishes to be placed in the same position it would have been in had the County been straightforward from the outset about its intention regarding El Toro, or advised Irvine *before the Settlement Agreement* that it was considering the repeal of its resolution opposing commercial use of El Toro.

Dated: March 12, 1987

Respectfully Submitted,

McDERMOTT, WILL & EMERY

JOHN E. McDERMOTT
(Counsel of Record)
ERICH R. LUSCHEI

APPENDIX A

Gatzke, Lodge & Mispagel
Michael Scott Gatzke*
Mark J. Dillon
2890 Pio Pico Drive, Ste. E
P.O. Box 1636
Carlsbad, CA 92088
(619)-729-2304

*A Professional Corporation

Adrian Kuyper, County Counsel
Daniel J. Didier, Deputy County Counsel
Office of the County Counsel
10 Civic Center Plaza
P. O. Box 1379
Santa Ana, California 92702
(714) 834-3300

Attorneys for Plaintiff, the County of Orange

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 85-1542 TJH (MCx)
FIRST AMENDED COMPLAINT

FILED
March 15, 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

COUNTY OF ORANGE,
Plaintiff,

v.

AIR CALIFORNIA, AMERICAN AIRLINES, AMERICA WEST AIRLINES, CONTINENTAL AIR LINES, INC., FRONTIER AIRLINES, INC., JET AMERICA, PACIFIC SOUTHWEST AIRLINES, REPUBLIC AIRLINES, INC., WESTERN AIR LINES, INC., ALASKA AIRLINES, INC., MUSE AIR CORPORATION, TRANS WORLD AIRLINES, INC., UNITED AIRLINES, INC., FEDERAL AVIATION ADMINISTRATION, McDONNELL DOUGLAS CORPORATION, CITY OF NEWPORT BEACH, STOP POLLUTING OUR NEWPORT CORPORATION, AIRPORT WORKING GROUP OF ORANGE COUNTY, INC., DOES 1 THROUGH 1,000, INCLUSIVE,
Defendants

Amending its Complaint as a matter of right, Plaintiff, the County of Orange, a political subdivision of the State of California, for its First Amended Complaint ("Complaint"), alleges:

NATURE OF THE CASE, JURISDICTION AND VENUE

1. This is an action for declaratory relief in respect of controversies arising under the United States Constitution (the Supremacy Clause, Art. VI, cl. 2; and the Commerce Clause, Art. I, §8, cl. 3); the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1301 *et seq.* (including amendments made by the Airline Deregulation Act of 1978); the Airport and Airway Development Act of 1970, former 49

U.S.C. §1701 *et seq.*; the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. §2101 *et seq.*; the Airport and Airway Improvement Act of 1982, 49 U.S.C. §2201 *et seq.*; the National Environmental Policy Act of 1969 ("NEPA"), as amended, 28 U.S.C. §4321 *et seq.*; and regulations and orders of the Federal Aviation administration in implementation and enforcement of those acts.

Plaintiff is the proprietor of John Wayne Airport, Orange County ("JWA"), a commercial air carrier airport located in Orange county. As alleged below, plaintiff has recently taken a series of discretionary legislative actions in respect of use and regulation of John Wayne Airport. These actions have created substantial interrelated controversies between and among the parties. A prompt judicial resolution of all of these controversies is necessary to allow the plaintiff to discharge promptly and efficiently its public responsibilities as the proprietor of JWA. These inevitably interrelated controversies are complex, and this action is brought to afford all interested and affected parties an opportunity to litigate their respective and related claims in a single forum.

2. Jurisdiction of this Court is proper by virtue of 28 U.S.C. §1331, because this is a civil action arising under the Constitution and the laws of the United States; and under 28 U.S.C. §1337 because this action arises under Acts of Congress regulating commerce.

3. Plaintiff additionally invokes the pendent (and ancillary) jurisdiction of this Court in respect of related state law claims under the California Environmental Quality Act (Public Resources Code §21000 *et seq.* ["CEQA"]), and the implementing regulations, the State CEQA Guidelines (14 Cal.Admin.Code §15000 *et seq.* ["the Guidelines"]). These State law claims are inevitably related to, and affected by the federal issues rasied in this

complaint. The exercise of pendent jurisdiction by this Court is necessary to afford complete relief among the parties and to avoid a multiplicity of actions which would otherwise threaten plaintiff with potentially inconsistent adjudications of related issues, and the possible imposition of inconsistent obligations on plaintiff.

4. Venue is proper in this District by virtue of 28 U.S.C. §1391(b), in that the cause of action arose in this District.

5. The relief sought in this action is a declaratory judgment under 28 U.S.C. §§2201 and 2202, declaring the rights, obligations and legal relations of the parties which are in controversy; and such preliminary and permanent injunctive relief and orders as may be necessary to permit a meaningful and complete adjudication of the issues, and the enforcement of the decisions of this Court.

THE PARTIES

The Plaintiff.

6. Plaintiff, the County of Orange ("the County"), is a political subdivision of the State of California. Under the authority of California law, the County is the proprietor and landlord of John Wayne Airport, Orange County ("JWA").

The Airline Defendants.

The "Authorized Air Carriers"

7. The County is informed and believes, and on that ground alleges that defendant Air California ("AirCal") is a

corporation, and a federally certificated air carrier authorized to do business in the State of California.

8. The County is informed and believes, and on that ground alleges that defendant American Airlines, Inc. ("American") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

9. The County is informed and believes, and on that ground alleges that defendant America West Airlines, ("America West") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

10. The County is informed and believes, and on that ground alleges that defendant Continental Air Lines, Inc. ("Continental") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

11. The County is informed and believes, and on that ground alleges that defendant Frontier Airlines, Inc. ("Frontier") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

12. The County is informed and believes, and on that ground alleges that defendant Jet America ("Jet America") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

13. The County is informed and believes, and on that ground alleges that defendant Pacific Southwest Airlines ("PSA") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

14. The County is informed and believes, and on that ground alleges that defendant Republic Airlines, Inc. ("Republic") is a corporation, and a federally certificated

air carrier authorized to do business in the State of California.

15. The County is informed and believes, and on that ground alleges that defendant Western Air Lines, Inc. ("Western") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

16. AirCal, American, Frontier, PSA, Republic and Western are currently regulated commercial operators authorized by the County to do business at JWA. By action on February 26, 1985, the County Board of Supervisors authorized its staff to negotiate operating agreements, leases, or any other necessary documents with America West, Continental and Jet America for regulated commercial service at JWA. None of these defendants have consented to be named in this action. In the remainder of this complaint, these nine defendants are occasionally referred to collectively as "the Authorized Air Carriers." America West, Continental and Jet America are occasionally referred to collectively as "the New Entrant Air Carriers."

The "Waiting List Air Carriers"

17. The County is informed and believes, and on that ground alleges that defendant Alaska Airlines, Inc. ("Alaska") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

18. The County is informed and believes, and on that ground alleges that defendant Muse Air Corporation ("Muse") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

19. The County is informed and believes, and on that ground alleges that defendant Trans World Airlines, Inc. ("TWA") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

20. The County is informed and believes, and on that ground alleges that defendant United Airlines, Inc. ("United") is a corporation, and a federally certificated air carrier authorized to do business in the State of California.

21. Alaska, Muse, TWA and United are potential regulated commercial operators which have requested permission to commence operations at JWA. Pursuant to County policy and regulation, these carriers have been placed on a waiting list from which new air carriers may be selected to commence operations at JWA under certain circumstances and conditions. They are not currently authorized to engage in scheduled operations at JWA. In the remainder of this complaint, these four defendants are occasionally referred to collectively as "the Waiting List Air Carriers."

Other Defendants.

22. The Federal Aviation Administration ("FAA") is an agency of the United States Department of Transportation ("DOT"). Pursuant to direct statutory authority and regulatory delegation by DOT, FAA has extensive regulatory authority over various civil aviation matters in the United States by virtue of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1301 *et seq.* ("the 1958 Act"), and Title 14 of the Code of Federal Regulations. FAA has not consented to be named as a party to this action.

23. The County is informed and believes, and on that ground alleges that defendant McDonnell Douglas Corporation ("MDC") is a corporation which, among other things, engages in the manufacture and sale of commercial aircraft, including the McDonnell Douglas MD-80 and related versions of the MD-80 aircraft.

24. The City of Newport Beach ("Newport Beach" or "the City") is a municipal corporation under the laws of the State of California, and is located within the County of Orange, California in an area generally to the south of JWA.

25. Stop Polluting Our Newport Corporation ("SPON") is a California corporation. The Plaintiff is informed and believes, and on that ground alleges that SPON purports to represent persons residing in Newport Beach in expressing their views concerning various local environmental matters, including environmental issues relating to JWA.

26. The County is informed and believes, and on that ground alleges that Airport Working Group of Orange County, Inc. ("AWG") is a California corporation; that AWG is a coalition of various organizations generally opposed to any increase in operations at JWA or other expansion of the airport; and that these groups and organizations represent various residents in Newport Beach and other areas to the south of JWA through AWG in their opposition to JWA operations.

27. Doe Defendants 1 through 1000, inclusive, are persons interested in the subject matter of this action, in whole or in part, and who take positions in respect of one or more of the controversies alleged in this complaint contrary and adverse to the positions of the plaintiff. Plaintiff is presently unaware of the actual identities of such persons, and therefore names them in this action by their respective fictitious names.

Background

John Wayne Airport

28. John Wayne Airport, Orange County is an airport serving commercial air carriers offering regularly scheduled passenger service to and from other airports in the United States. JWA is an element of the National Air Transportation System, and has been certificated by FAA under the provisions of 14 C.F.R. Part 139. JWA is also certificated as a commercial airport by the State of California.

29. JWA is the only commercial air carrier airport in Orange County. Because of substantial existing facility limitations and constraints, and because of regulations adopted by the County for environmental and other purposes, JWA presently serves only a portion of the existing demand for air transportation services in Orange County. That portion of the demand not served in Orange County must be served by other commercial air carrier airports in Southern California.

30. The County has received grants of federal funds for the development and improvement of airport facilities at JWA under the Airport and Airway Development Act of 1970 ("the 1970 Act"). In accepting such funds, the County entered into written contracts with the FAA (acting on behalf of the United States), as provided and required by the 1970 Act.

31. Since at least 1972, the County has regulated the scope and nature of certain uses of JWA by the public and by commercial air carriers. This regulation has been undertaken in the sound exercise of the County's legislative discretion to control noise and other environmental effects

of aircraft operations at JWA, and for other purposes. In engaging in such regulation, the County has been exercising its federally authorized proprietor rights to regulate JWA for the purpose of controlling its potential litigation exposure to persons who might claim that the operation of JWA has taken or damaged their property, or caused them bodily injury. The County is currently a defendant in such damage actions now pending in the Orange County Superior Court and has been a defendant in other similar actions in the past.

In adopting such regulations, the County has also been acting within its authority as the proprietor of JWA to regulate airport use in a manner which strikes an appropriate balance between local needs for air transportation services and the potential environmental consequences of air transportation activities at JWA.

32. Among other regulations, since 1972, the County has limited the permissible number of average daily departures ("ADDs") by regularly scheduled commercial operators operating relatively noisier types of aircraft. Although the form of this regulation has been expressed in various terms since 1972, the substance of the regulation remained essentially the same between 1972 and 1982. Since 1972 the maximum permitted level of ADDs at JWA has been 41 ADD.

33. On March 17, 1982, the County adopted its commercial airline access plan for JWA ("the March, 1982 Plan.") The March, 1982 plan regulated ADDs essentially as follows:

(a) "Class B" ADDs were defined by noise and weight limitations. The types of commercial jet aircraft which had historically used JWA, such as the B737-200 and DC-9-10/30, were Class B aircraft;

(b) "Class A" ADDs were aircraft defined by noise and weight limitations. The permissible levels of noise for "Class A" aircraft were lower than for "Class B" aircraft. The MD-80 is one aircraft which qualified as "Class A" aircraft; and

(c) ADDs were to be reallocated during the two year period of the plan (June 1, 1982 to May 31, 1984) on a quarterly basis to afford additional operational opportunities for various air carriers, with preference in reallocation given to Class A ADDs.

34. On July 18, 1983, the Airport Manager of JWA presented to the Board of Supervisors the report and results of a study authorized by the Board regarding the capacity and limitations on the use of existing facilities at JWA by commercial air carriers. (*John Wayne Airport Facilities Capacity Study* ["the Facilities Capacity Study"]). This study was prepared by an independent consultant, and concluded that the existing facilities at JWA were not reasonably capable of accommodating more than five commercial air carriers. Six commercial carriers were then serving JWA.

35. Because of the matters disclosed and confirmed by the Facilities Capacity Study, the Board of Supervisors, by their Resolution No. 83-1556 (October 19, 1983), limited the permitted number of commercial carriers at JWA to six. This action was confirmed and extended on May 30, 1984 by Board Resolution No. 84-846. In Resolution No. 83-1556, and as confirmed by subsequent action of the Board of Supervisors, the Airport Manager of JWA was directed to maintain a "waiting list" of persons desiring to commence regularly scheduled commercial air carrier service at JWA, with the anticipation that if new entry opportunities became available at JWA for such operators,

they would be selected from (and in the order of) the waiting list during the period of the Interim Plan alleged in the following paragraph.

36. On May 30, 1984, the County, by Board Resolution No. 84-846, also adopted an interim access plan and regulation ("the Interim Plan") which, by subsequent actions, has been extended to March 31, 1985. The Interim Plan precludes operations at JWA by regularly scheduled commercial air carriers using aircraft noisier than the County's definition of Class A aircraft.

37. Historically, the County has regulated operations (ADDs) by regularly scheduled commercial operators using aircraft which generated more than 89.5 dB SENEL at any of the monitoring stations of the County's noise monitoring system located to the south of the airport, the direction of operation for the vast majority of aircraft departures at JWA. In Resolution No. 84-579, and by subsequent actions extending the limitation to March 31, 1985, the County temporarily lowered this regulatory threshold to 86.0 dB SENEL because of its desire to ensure continuing regulatory control over commercial air carrier operations while the County completed EIR 508 and the CEQA process on the proposed project alleged and described below.

The Airport Project

38. On February 26, 1985, the County took final action to approve and adopt a project for JWA which, among other things: (1) increased the permitted number of ADDs; (2) created two classes of regulated commercial aircraft ("Class A" and "Class AA") with certain regulatory preferences given to the quieter Class AA aircraft; (3)

authorized the entry of three additional regulated commercial air carriers into service at JWA, selected in order from the Airport Manager's waiting list; and (4) provided for facilities improvements at JWA (including a new passenger terminal) and various land use actions in connection with the project approval of an increase in the authorized number of ADDs at JWA. These actions are sometimes referred to in this complaint for convenience as "the Airport project." For purposes of this action (and for purposes of CEQA), the project approved by the Board of Supervisors is described more precisely and in greater detail in Board Resolution Nos. 85-255 to 85-260 (all adopted on February 26, 1985) and the documents referred to in those resolutions.

39. The adoption of the Airport project was the culmination of a 15 month effort by the County to address both the future of the use of JWA through the year 2005, and the critical and controversial issues relating to the regulation of the airport. These issues affect both federal and local interests. Because of the requirements of CEQA, this planning effort and evaluation occurred in the context of the CEQA environmental process. The evaluation of possible airport regulations and restrictions was an element of EIR 508, prepared for the Airport project, and was undertaken in the context of possible mitigation measures which the County might adopt in connection with the EIR 508 project.

40. The Airport project began in December, 1982. At that time, the County's Environmental Management Agency ("EMA") and the Airport Manager's Office prepared a report for the Orange County Board of Supervisors which described a coordinated approach for the

preparation of documentation to critically evaluate future operations and development at JWA.

41. On December 15, 1982, the Board of Supervisors considered and approved the coordinated approach developed by the EMA and the JWA staff. By Board Minute Order, the Board directed staff to begin a study concerning the land use and environmental impacts associated with possible increases in authorized levels of regulated operations, associated development of JWA, and possible actions which might be taken in surrounding residential areas to enhance their compatibility with airport activities. County staff was instructed to report back to the Board within 90 days with recommendations for the Board's selection of a proposed project for planning and for CEQA evaluation.

42. At its meeting on April 13, 1983, the Board passed Resolution No. 83-547 formally adopting a proposed project for JWA. This project was defined as a two-phased increase in Class A ADDs and a master plan for related airport facilities improvements, together with a land use compatibility plan ("LUCP"). The phasing of the ADD increases was defined as an immediate increase from 41 ADD to 55 Class ADD ("Phase I"), with a further increase to 73 Class A ADD upon completion of the associated airport facilities improvements ("Phase II"). The Board also directed that staff prepare (with the assistance of consultants later approved by the Board) a project EIR. This EIR became County EIR 508.

43. The County also coordinated with FAA in order to allow EIR 508 to also be circulated and considered by FAA as an Environmental Impact Statement ("EIS") prepared under the National Environmental Policy Act ("NEPA"). FAA is currently considering EIR/EIS 508 in connection

with various regulatory responsibilities which it has in respect of JWA and the Airport Project.

44. During the preparation of EIR/EIS 508, the County consulted with FAA to discuss issues relating to airport regulation and airline access at JWA. FAA and the County (together with various other parties) had been engaged in litigation in this Court on such issues in the past (*e.g. PSA et al., etc. v. County of Orange, et al.*, C.D. Cal Civ. No. 81-3248-TJH (Gx) and *American Airlines, Inc. v. County of Orange, et al.*, C.D. Cal. Civ. No. 83-294-TJH (JRx)). Both FAA and the County desired to avoid future litigation between them and to reach an understanding accommodating both legitimate federal and local interests. To that end, the County advised FAA of the environmental and planning processes it was undertaking, and sought input from FAA regarding its views on how the County might regulate JWA (if the airport project were adopted) in a manner consistent with any statutory or contractual obligations the County might have to FAA or to the United States. FAA, recognizing the serious existing facilities constraints at JWA, and the legitimate concerns of the community and of existing airport users, provided its opinions, which were reflected in EIR/EIS 508. The views of FAA were evaluated in EIR 508 and incorporated into possible regulatory actions by the County which were considered by the County as a possible mitigation measure which might be adopted in connection with the Airport project.

45. On July 13, 1984, "*Draft Environmental Impact Report 508 and Draft Environmental Impact Statement 508 for the John Wayne Airport Master Plan and the Santa Ana Heights Land Use Compatibility Program*" ("DEIR 508") was completed and submitted to the County and to

FAA. On that same date, the County's EMA prepared and filed a Notice of Completion of DEIR 508 and circulated DEIR 508 for public review and comment.

46. The public review and comment period for DEIR 508 began on July 13, 1984, and was scheduled to end on August 27, 1984. On August 14, 1984, the City of Newport Beach requested in writing that the public review and comment period for DEIR 508 be extended from August 27, 1984 until September 11, 1984. On August 22, 1984, the Board of Supervisors authorized the extension of time in which to provide comments to DEIR 508 requested by the City.

47. In considering a project increase to 55 Class A ADDs (Phase I), and in light of the need to adopt a new commercial airline access plan, DEIR 508 discussed at length various alternative access plans which might be adopted as mitigation measures for the proposed project. The subject of airline access and airport regulation at JWA, as considered in DEIR 508, received extensive written comments by the City, SPON, AWG, MCD and various of the Airline Defendants. The City, SPON and AWG, in particular, contended in their comments that the County could not legitimately define the proposed project as an increase in authorized ADDs because, among other reasons, the County might lack authority to regulate airport operations at JWA. These defendants therefore contended that the DEIR was inadequate and incomplete under CEQA and that the County was unable to legally approve an increase in regulated operations at JWA.

At the same time, these defendants contended that DEIR 508 failed to adequately evaluate additional airport regulations which might be adopted by the County in mitigation of the proposed project.

48. Following public review and comment, the County reveiwed the written comments to DEIR 508 and prepared written responses to those comments. The County also made significant revisions and additions to DEIR 508 in response to the public comments, including the identification of additional access plan alternatives which might be adopted as mitigation measures for the project. Revised Draft EIR/EIS 508 ("RDEIR 508"), which consisted of DEIR 508, as amended (Volumes 1 and 2) and the public comments and staff responses (Volume 3), was then recirculated for public review and comment from November 13, 1984 to December 27, 1984.

49. Following public review and comment on RDEIR 508, the County evaluated the comments received from interested persons on the revised draft EIR and prepared written responses to those comments (Final EIR 508, Volume 4).

50. Between November 20, 1984 and January 23, 1985, the Orange County Planning Commission and the Orange County Airport Commission held approximately nine public hearings, and accepted written and oral comments from the public on the RDEIR and the proposed project. After receiving this additional input, and having considered RDEIR 508 and the comments and responses to the RDEIR, both commissions made their recommendations to the Board of Supervisors that the EIR be certified as adequate and complete, and made their respective recommendations regarding the proposed project.

51. On January 30, 1985, the Orange County Board of Supervisors considered the proposed project and EIR 508. At that time, the Board tentatively approved and certified the EIR, subject to preparation of final findings and their adoption by the Board, and selected a project authorizing a

phased increase in regulated ADDs, mitigated by various regulatory and other measures. The Board also tentatively approved construction of various specified airport improvements in connection with the authorized increase in regulated flights. The Board then continued the matter to February 13, 1985 to further consider the land use elements of the project, and to allow preparation of proposed findings for their consideration and approval.

52. On February 13, 1985, the Board held a public meeting at which they decided to seek further input on the land use (LUCP) elements of the project from the Planning Commission, and continued their deliberation on the project to February 26, 1985.

53. On February 26, 1985, the Board took final action by various resolutions to approve and implement the Airport project. Specifically:

(a) Resolution No. 85-255 certified EIR 508 as adequate and complete under applicable provisions of CEQA;

(b) Resolution No. 85-256 approved a master plan for facilities improvements at JWA and authorized various other implementing actions by County staff;

(c) Resolution No. 85-257 approved a land use plan ("LUCP") for areas generally south of JWA designed to enhance their compatibility with JWA;

(d) Resolution No. 85-258 approved a land use element action in connection with the LUCP;

(e) Resolution No. 85-259 adopted a Commercial Airline Access Plan and Regulation for JWA for the period April 1, 1985 to March 31, 1990 ("the 1985 Access Plan"); and

(f) Resolution No. 85-260 made related findings overriding determinations of the Airport Land Use Commission as provided for by California law.

54. The 1985 Access Plan was adopted by the County to serve a number of important purposes. The Plan implemented the project decision approved by the Board of Supervisors in the certification of EIR 508, including an increase from 41 ADD to 55 ADD on April 1, 1985 and the authorization of three additional carriers to commence service at JWA on that date. It also represented the next step in the County's longstanding policy of attempting to provide a reasonable level of air transportation service to the Orange County community, while achieving even further gains, in addition to those already realized by past County policies, in reducing aircraft noise in areas surrounding JWA. The plan also was effectively a compromise with the FAA in recognition of federal interests and concerns regarding airport access, while simultaneously reflecting recognition of realistic and practical limitations on the use of JWA during Phase I of the Airport project, and the legitimate interests and concerns of the local community.

55. Pursuant to Public Resources Code §21152(a), a Notice of Determination was filed by the County with the County Clerk on March 5, 1985. The filing and posting of the Notice of Determination had the effect of starting a 30-day statute of limitations on court challenges to the approval of the project under CEQA (Public Resources Code §21167(c); Guidelines §15094(d)).

56. The County is informed and believes, and on that ground alleges that in adopting the 1985 Access Plan, it met the concerns and objectives of FAA in respect of airport access, and struck a reasonable balance between the multitude of competing interests.

57. During the CEQA process, and in public comments made shortly thereafter, various parties to this action

indicated or stated their intent to initiate various legal actions against the County in various courts in respect of actions which the County took in approving the Airport project. The County is informed and believes, and on that ground alleges, that:

(a) SPON and the AWG intend to initiate an action actions in the Orange County Superior Court challenging the Airport project decisions of the County on CEQA grounds, and in such action or actions, they do not intend to bring before the Court all of the parties and related issues raised by this Complaint;

(b) Newport Beach is considering initiating an action or actions in the Orange County Superior Court challenging the Airport project decisions of the County on CEQA grounds and that if such actions are initiated, the City would not intend to bring before the Court all of the parties and related issues raised by this Complaint;

(c) McDonnell Douglas intends to initiate action in this federal court challenging certain of the County's Airport project decisions on federal statutory and constitutional grounds, and that if such actions are initiated, MCD would not intend to bring before the Court all of the parties and related issues raised by this Complaint;

(d) The Waiting List Air Carriers intend to initiate an action or actions in this federal court challenging certain of the County's Airport project decisions on federal statutory and constitutional grounds, and that if such actions are initiated, the Waiting List Air Carriers would not intend to bring before the Court all of the parties and related issues raised by this Complaint; and

(e) That each of the parties to this action is interested in, and would to some degree be affected by the decision of a court on each and every issue and controversy alleged in

this Complaint, or any other issues which any of the parties might raise regarding the County's Airport project decisions by way of response to this Complaint.

FIRST CAUSE OF ACTION
(Declaratory Relief)

58. Plaintiff incorporates by this reference the allegations of paragraphs 1 through 57 of this complaint.

59. An actual controversy has arisen between and among the parties to this action regarding their respective rights, and obligations, and a declaration of such rights, duties and obligations by this Court is necessary to resolve this controversy. Specifically, the County is informed and believes that MCD, American, and Republic contend that provisions of the 1985 Access Plan which give certain regulatory preferences at JWA to commercial aircraft quieter than the McDonnell Douglas MD-80 are illegal and unconstitutional in that:

(a) Such provisions are unjustly discriminatory in violation of obligations of the County under its grant agreements with FAA and related provisions of the Airport and Airway Development Act of 1970;

(b) Such provisions are preempted and in violation of the Supremacy Clause because they have been preempted by regulatory action of FAA under the Federal Aviation Act of 1958 in regulations adopted by FAA under 14 C.F.R. Parts 36 and 91; and

(c) Such provisions violate Section 105 (a)(1) of the Airline Deregulation Act of 1978 (amending the 1958 Act), 49 U.S.C. §1305 (a)(1).

60. The County contends that its actions in adopting the 1985 Access Plan are legal and constitutional. The County

further contends that the defendants named in paragraph 59 have no standing or right of action under federal law to challenge the County's actions. The County further contends that its actions as alleged are reasonable and legitimate exercises of authority by an airport proprietor and that, under all of the circumstances, they constitute a reasonable accommodation between legitimate federal and local interests. The County further contends that its actions significantly reduce its potential exposure to noise related damage suits which might otherwise arise out of the operation of JWA and the implementation of the Airport project.

61. The County is informed and believes, and on that ground alleges that FAA would contend that the position of the County alleged in paragraph 60, is correct.

62. The County is further informed and believes that Newport Beach, SPON, AWG, PSA, Air Cal, Western and America West also contend that the provisions of the 1985 Access Plan at issue in this cause of action are legitimate and lawful exercises of proprietor authority.

63. A declaration of the rights and obligations of the parties is necessary in order to allow a meaningful implementation of the 1985 Access plan and realization of the environmentally mitigating effects of the regulations at issue in this cause of action.

SECOND CAUSE OF ACTION
(Declaratory Relief)

64. Plaintiff incorporates by this reference the allegations of paragraphs 1 through 57 of this complaint.

65. An actual controversy has arisen between and among the parties to this action regarding their respective

rights, duties and obligations, and a declaration of such rights, duties and obligations by this Court is necessary to resolve this controversy. Specifically, the County is informed and believes that the Waiting List Air Carrier defendants contend that the decision of the County in connection with its certification of EIR 508 and adoption of the Airport Project, and its adoption of the 1985 Access Plan provisions allowing entry into service at JWA project by three additional air carriers during Phase I of the Airport project selected by the order in which their names appeared on the Airport Manager's waiting list was unlawful and unconstitutional in that:

(a) Such provisions are unjustly discriminatory in violation of obligations of the County under its grant agreements with FAA and related provisions of the Airport and Airway Development Act of 1970;

(b) Such provisions are preempted and in violation of the Supremacy Clause because they have been preempted by provisions of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C §1349(a)); and

(c) Such provisions violate Section 105(a)(1) of the Airline Deregulation Act of 1978 (amending the 1958 Act, 49 U.S.C. §1305(a)(1)

66. The County contends that its actions in adopting the 1985 Access Plan are legal and constitutional. The County further contends that the defendants named in paragraph 65 have no standing or right of action under federal law to challenge the County's actions. The County further contends that its actions as alleged are reasonable and legitimate exercises of authority by an airport proprietor and that, under all of the circumstances, they constitute a reasonable accommodation between legitimate federal and local interests. The County further contends that its actions

significantly reduce its potential exposure to noise related damage suits which might otherwise arise out of the operation of JWA and the implementation of the Airport project.

67. The County is informed and believes that FAA, America West, Continental and Jet America contend that the County's actions as alleged in this cause of action are lawful and constitutional and constitute a reasonable exercise of authority by an airport proprietor.

68. A declaration of the rights and obligations of the parties is necessary in order to allow a meaningful implementation of the 1985 Access Plan and realization of the environmentally mitigating effects of the regulations at issue in this cause of action.

THIRD CAUSE OF ACTION
(Declaratory Relief)

69. The plaintiff incorporates by this reference the allegations of paragraphs 1 through 57 of this complaint.

70. An actual controversy has arisen between and among the parties to this action regarding their respective rights, duties and obligations, and a declaration of such rights, duties and obligations by this Court is necessary to resolve this controversy. Specifically, the County is informed and believes that the Waiting List Air Carrier defendants contend that the allocation provisions of the 1985 Access Plan, and the term of the Plan are unlawful and unconstitutional in that:

(a) Such provisions are unjustly discriminatory in violation of obligations of the County under its grant agreements with FAA and related provisions of the Airport and Airway Development Act of 1970;

(b) Such provisions are preempted and in violation of the Supremacy Clause because they have been preempted by provisions of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. §1349(a)); and

(c) Such provisions violate Section 105 (a)(1) of the Airline Deregulation Act of 1978 (amending the 1958 Act), 49 U.S.C. §1305 (a)(1).

71. The County contends that its actions in adopting the 1985 Access Plan are legal and constitutional. The County further contends that the defendants named in paragraph 70 have no standing or right of action under federal law to challenge the County's actions. The County further contends that its actions as alleged are reasonable and legitimate exercises of authority by an airport proprietor and that, under all of the circumstances, they constitute a reasonable accommodation between legitimate federal and local interests. The County further contends that its actions significantly reduce its potential exposure to noise related damage suits which might otherwise arise out of the operation of JWA and the implementation of the Airport project.

72. The County is informed and believes, and on that ground alleges that FAA and the Authorized Air Carrier defendants agree with the contentions of the County alleged in paragraph 71.

73. A declaration of the rights and obligations of the parties is necessary in order to allow a meaningful implementation of the 1985 Access Plan and realization of the environmentally mitigating effects of the regulations at issue in this cause of action.

FOURTH CAUSE OF ACTION
(Declaratory Relief - Compliance with CEQA)
(Federal Law Claims)

74. The plaintiff incorporates by this reference the allegations of paragraphs 1 through 73 of this complaint.

75. An actual controversy involving federal laws and regulations has arisen between and among the parties to this action regarding their respective rights, duties and obligations, and a declaration of such rights, duties and obligations by this Court is necessary to resolve this controversy. Specifically, the County is informed and believes that Newport Beach, SPON and AWG ("the CEQA defendants") contend that in certifying EIR 508 as adequate and complete under CEQA in connection with the approval and implementation of the Airport project, the County violated CEQA in that:

(a) The County failed to prepare EIR 508 in a manner required by FAA Order 5050.2B, and in a manner required by FAA advisory circulars and regulations prepared with respect to public input and participation in the preparation and development of the Airport project;

(b) The County in part defined "the project" for EIR 508 in terms of an increase in the authorized number of regulated ADDs at JWA. The CEQA defendants contend that such definition of the EIR project is impermissible under CEQA because the County is now preempted by federal law, or may be preempted by federal law during the projected life of the project from regulating the permissible number of ADDs, rendering the EIR's project description inaccurate and thereby tainting the entirety of the environmental analysis in EIR 508;

(c) That the County has a duty under CEQA to adopt all feasible mitigation measures for the Airport project which would reduce the environmental effects of the project, including any and all possible regulations and restrictions on the use of JWA by aircraft operators regardless of the effects on airport operations and service, and that CEQA, to that extent, acts affirmatively to limit the discretion of an airport proprietor in the regulation of airport use, specifically the use of JWA: and

(d) That the County failed to comply with Public Resources Code §21168.9 which, the CEQA defendants contend, would require the County to seek the approval of the state courts of its project, and of its airport restrictions adopted or continued in mitigation of the project, before implementation of the project, including the project increase in authorized ADDs.

76. The County is further informed and believes, and on that ground alleges that, in the absence of this action, the CEQA defendants intend to initiate an action or actions against the County in state court under the provisions of CEQA, and that they intend to seek preliminary and permanent relief which would enjoin the implementation of the Airport project, and which would control or otherwise regulate by state court order the permissible level and nature of airport operations at JWA. Any such relief would inevitably prejudice federal privileges and rights of the County and the other defendants in respect of the implementation of the Airport project.

77. The County contends that it has complied with all applicable provisions of CEQA in the preparation and certification of EIR 508 and approval of the Airport project; that it has complied with any applicable federal orders or regulations in the development and adoption of

the project; that it now has under federal law, and that there is no reasonable basis to anticipate a change in federal law, the authority to regulate and restrict the permissible number of authorized ADDs at JWA; that no state law, including CEQA, may operate to limit the regulatory discretion of an airport proprietor, and that any and all such provisions in CEQA are preempted and unconstitutional under the Supremacy Clause of the United States Constitution; and that no state court may issue its orders inequity under authority of CEQA or any other state law which would operate in such a manner as to restrict the discretion of an airport proprietor in the regulation of airport use.

78. The County is informed and believes that all defendants to this action, other than the CEQA defendants, contend that the position of the County, as alleged in paragraph 77, is correct.

79. A declaration of the respective rights and obligations of the parties is necessary in order to avoid prejudice to their respective positions and their federally authorized and delegated rights and privileges, the unnecessary and unconstitutional imposition of inappropriate constraints on the air travelling public, and prejudice to those citizens of Orange County which will benefit from implementation of the Airport project.

FIFTH CAUSE OF ACTION
(Declaratory Relief - CEQA)
(Federal and Pendant State Law Claims)

80. The plaintiff incorporates by this reference the allegations of paragraphs 1 through 79 of this complaint.

81. An actual controversy involving both federal law and laws of the State of California has arisen between and among the parties to this action regarding their respective rights, duties and obligations, and a declaration of such rights, duties and obligations by this Court is necessary to resolve this controversy. Specifically, the County is informed and believes that Newport Beach, SPON and AWG contend that in certifying EIR 508 as adequate and complete under CEQA in connection with the approval and implementation of the Airport project, the County violated CEQA in that:

(a) The County in part defined "the project" for EIR 508 in terms of an increase in the authorized number of regulated ADDs at JWA. The CEQA defendants contend that such definition of the EIR project is impermissible under CEQA because the County is now preempted by federal law, or may be preempted by federal law during the projected life of the project from regulating the permissible number of ADDs, rendering the EIR's project description inaccurate and thereby tainting the entirety of the environmental analysis in EIR 508;

(b) The County in part defined the project of EIR 508 in terms of an increase in the number of authorized ADDs. The CEQA defendants contend that such definition of the EIR project is impermissible under CEQA because there is a possibility that the County may, at some future date, authorize further increases in ADD levels at JWA, and that the project must therefore be described in terms of the full, unlimited and unregulated "capacity" of any facility improvements at JWA undertaken pursuant to and in connection with the Airport project;

(c) The failure of the County to properly define the project for purposes of EIR 508 renders the EIR

description and analysis of the environmental consequences of the project misleading, inaccurate and incomplete; and

(d) That even if the project description is adequate and accurate, the EIR fails to adequately disclose the environmental consequences of the project in respect of its significant adverse environmental impacts including, but not limited to, traffic, air quality, growth inducing impacts and noise.

82. The County is further informed and believes, and on that ground alleges that, in the absence of this action, the CEQA defendants intend to initiate an action or actions against the County in state court under the provisions of CEQA, and that they intend to seek preliminary and permanent relief which would enjoin the implementation of the Airport project and control or otherwise regulate by state court order the permissible level and nature of airport operations at JWA. Any such relief would inevitably prejudice federal privileges and rights of the County and the other defendants in respect of the implementation of the Airport project.

83. The County contends that it has complied with all applicable provisions of CEQA in the preparation and certification of EIR 508 and approval of the Airport project; that it has not abused its discretion in adopting the project and certifying EIR 508 as adequate and complete; that it has proceeded in the manner required by law; and that its decisions in respect of the Airport project and EIR 508 are supported by substantial evidence.

84. The County has alleged that to the extent CEQA would purport to affect or limit in any way the discretion of the County as an airport proprietor in the regulation of airport use at JWA, it is preempted and unconstitutional under the Supremacy Clause of the United States

Constitution. The County does not contend that CEQA is preempted to the extent that it merely requires that a decision making body prepare and consider a report describing the environmental consequences of proposed discretionary actions or projects ("the informational purposes of CEQA"). The County contends that Final EIR 508 complies with the informational purposes and requirements of CEQA.

85. The County is informed and believes that all defendants to this action, other than the CEQA defendants, contend that the position of the County, as alleged in this cause of action, is correct.

86. A declaration of the respective rights and obligations of the parties is necessary in order to avoid prejudice to their respective positions and their federally authorized and delegated rights and privileges and the privileges authorized by the adoption of the Airport project by the County, the unnecessary imposition of inappropriate constraints on the air traveling public, and prejudice to those citizens of Orange County which will benefit from implementation of the Airport project.

SIXTH CAUSE OF ACTION
(Injunctive Relief)

87. The plaintiff incorporates by this reference the allegations of paragraphs 1 through 86 of this complaint.

88. If Newport Beach, SPON or AWG initiate separate CEQA state court actions in respect of EIR 508, they may effectively deprive this Court of the ability to enjoin such actions or stay the state court proceedings. The simultaneous prosecution of this action and separate state court CEQA actions would inevitably involve similar issues which

could be considered and adjudicated only imperfectly and incompletely because the issues are inevitably interrelated. In certifying EIR 508 and approving the Airport project, the County was required not only to consider relevant environmental considerations as disclosed by EIR 508, but also relevant legal, social, political and economic considerations inevitably involved in implementation of the Airport project. The lawfulness of the County's actions cannot meaningfully be adjudicated in any action of lesser scope that the scope of controversial issues which were before the County when it made its decisions.

89. If not enjoined, the County is informed and believes that Newport Beach, SPON and AWG will seek to prevent a complete adjudication of all of these related issues, and the issuance by this Court of such temporary and permanent injunctive relief as may be necessary against such defendants is essential to preserve the integrity of this action, the jurisdiction of the Court over the entire controversy, and the rights of all of the parties to a complete adjudication of their disputes. Such action would require a significant duplication of litigation effort and the expenditure of public funds by the County and other parties. No defendant would be harmed by any such orders.

WHEREFORE, PLAINTIFF PRAYS:

1. For a declaration of its rights and the lawfulness of its actions as alleged in the First, Second, Third and Fourth and Fifth Causes of Action;

2. For such injunctive relief as may be necessary as alleged in the Sixth Cause of Action;

3. For its costs of suit; and

4. For such other and further relief as may be deemed necessary or appropriate by the Court.

March 15, 1985

Michael Scott Gatzke
Mark J. Dillon
Gatzke, Lodge & Mispagel

Attorneys For The
County of Orange

By: Michael Scott Gatzke